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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1007~~ 140

Estate of EDWARD F. PIPE, Deceased,
NETTIE M. PIPE, Executrix,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF OF PETITIONER.

RUSSELL D. MORRIS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 1031

ESTATE OF EDWARD F. PIPE, DECEASED, NETTIE M. PIPE, EXECUTRIX,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF OF PETITIONER.

I. Respondent bases his argument (Resp. Br. 4-8) that Mrs. Pipe's power to invade principal is not suffiiciently broad to meet the requirements of Section 812(e)(1)(F) of the Internal Revenue Code of 1939 on the erroneous assumption that it is a "power to withdraw the principal of the trust for personal consumption." (Resp. Br. 6.) The New York cases upon which he relies all involve such a limited type of power, namely, a power merely "to use" principal (*Matter of Lane*, 201 Misc. 1003; *Matter of Briggs*, 180 App. Div. 752) or a power "to invade principal if necessary" (*Manktelow* v. *Nevlezer*, 200 Misc. 536).

Obviously, a power limited to personal use or consumption is insufficient to satisfy the statute. But Mrs. Pipe has a much broader power. She is given (R. 27)

> "full power to use, enjoy, sell or dispose of"

the principal of her husband's residuary estate

> "*for such purposes or in such manner as she in her uncontrolled discretion may choose,* it being my desire to place *no restraint* on her in any respect *concerning the absolute right of full disposition* and use of the whole or any part"

of such principal, except that she has no power to dispose by will of any part of the principal which she has not consumed or disposed of during her life. Even less comprehensively phrased powers have been held to give a life tenant an unlimited and absolute right of disposition during his lifetime. *Seaward* v. *Davis,* 198 N. Y. 415; recently cited with approval in *In re Kelly's Will,* 137 N. Y. S. 2d 87 (1954).

The New York cases relied upon by respondent involve an entirely different type of power. They are irrelevant here and hence respondent's principal argument must fail. Respondent's statement that the court below recognized that Mrs. Pipe's power is not sufficiently broad to enable her to make a gift of the property *during her life* (Resp. Br. 8), is simply not so. The court below expressly stated (Pet. 17-18):

> "*During her lifetime,* no restraint whatsoever is imposed upon her power to consume or dispose of the principal of her life estate as she wishes." (Italics as in original.)

2. We can not agree with respondent's view as to the importance of the issue presented by this case. (Resp. Br.

9.) The court below denied the marital deduction because Mrs. Pipe does not have the power to dispose of principal both during her lifetime *and by will*. Section 812(e)(1)(F), we think, provides that a surviving spouse need have only one or the other power in order for the bequest to qualify for the deduction. We believe that the bar generally has so interpreted the statute and that the decision of the court below has caused doubt, confusion and grave concern.

Conclusion.

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted;

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Of Counsel.